

Members

Sen. Marvin Riegsecker, Chairperson
Sen. Rose Ann Antich
Rep. Sheila Klinker
Rep. Robert Alderman
Sylvia Marie Brantley
Christopher Durcholz
Suda Hopkins
Sally Lowery
Ervin Picha
Joanne Rains
Thomas Van Meter
Betty Williams



INDIANA COMMISSION ON MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

LSA Staff:

Carrie S. Cloud, Attorney for the Commission
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Authority: P.L. 245-1997, P.L. 272-1999

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MEETING MINUTES¹

Meeting Date: July 21, 1999
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Marvin Riegsecker, Chairperson; Sen. Rose Ann Antich; Rep. Sheila Klinker; Rep. Robert Alderman; Sylvia Marie Brantley; Christopher Durcholz; Suda Hopkins; Thomas Van Meter.

Members Absent: Sally Lowery; Ervin Picha; Joanne Rains; Betty Williams.

LSA Staff Present: Carrie S. Cloud, Staff Attorney; Beverly Holloway, Fiscal Analyst.

Call to Order

Senator Riegsecker called the meeting to order at approximately 10:15 a.m. After having the Commission members introduce themselves and introducing the staff present, Senator Riegsecker related an experience he had recently when speaking to a group of persons with developmental disabilities. Senator Riegsecker stated that in speaking with those individuals, he was reminded that sometimes with independence comes isolation, and it is important for the Commission to keep that fact in mind when discussing issues regarding the transitioning of persons from institutional settings to community settings.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Issues Assigned to the Commission

Senator Riegsecker asked Carrie Cloud, Attorney for the Commission, to explain the issues that have recently been assigned to the Commission. Ms. Cloud stated that P.L. 272-1999 (SB 606) extended the life of the Commission until January 1, 2005, and added the following responsibilities to the Commission:

(1) Review and make recommendations regarding the implementation of the comprehensive plan prepared by the developmental disabilities task force (i.e., the "317 task force plan").

(2) Review and make recommendations regarding the development by the Division of Disability, Aging and Rehabilitative Services (DDARS) of a statewide plan to address quality assurance in community based settings.

Ms. Cloud also reported that the Legislative Council, by resolution, had directed the Commission to study and monitor the services available to persons with developmental disabilities.

Update from Division of Disability, Aging & Rehabilitative Services on the Department of Justice investigations of Muscatatuck State Developmental Center and Fort Wayne State Developmental Center

Ms. Debra M. Simmons Wilson, Director, Division of Disability, Aging & Rehabilitative Services, provided an update to the Commission on the recent United States Department of Justice (DOJ) investigations of the Muscatatuck and Fort Wayne State Developmental Centers and on the actions of DDARS since those investigations. Ms. Wilson provided the Commission members with two handouts, one of which was a news release from the Family and Social Services Administration (FSSA) dated June 18, 1999, and one of which was entitled "Department of Justice Briefing: Indiana's Turnaround Actions, June 1999." (A copy of each of these handouts, referred to as "Exhibit A" and "Exhibit B", respectively, is on file with the Legislative Information Center.)

Ms. Wilson informed the Commission members that the DOJ investigations at Muscatatuck State Developmental Center (Muscatatuck SDC) and Fort Wayne State Developmental Center (Fort Wayne SDC) took place over several days in October, 1998. Upon completion of the on-site portion of each of the investigations, the DOJ investigators held an exit interview with DDARS personnel to discuss preliminary findings. In these exit interviews, the DOJ investigators identified deficiencies in the following five areas:

(1) Instances of misuse of restraining medications and physical restraints.

(2) Inadequate life-skills and behavior skills training for residents and psychiatric services.

(3) Instances of residents inflicting injuries upon themselves or other residents

(4) Instances of inadequate health care.

(5) Inadequate levels of integrating residents into community settings. Ms. Wilson stated that these five areas of deficiency were reflected in the DOJ report that was issued in mid-June of this year.

Ms. Wilson told the Commission that DDARS began working on addressing the areas

pointed out by the DOJ investigators as soon as the exit interviews were completed. She stated that the actions taken by DDARS, which are discussed in more detail in her handouts, include zero tolerance of abuse and neglect, including immediate action (e.g., removing the staff member who is alleged to have committed the abuse/neglect from contact with residents until the allegation is resolved) and increasing staffing levels through a variety of methods (e.g., contractors and job fairs). Ms. Wilson related to the Commission that dealing with persons with developmental disabilities is an art and is not an easy task. She remarked that when she recently served as interim superintendent at Muscatatuck SDC, she noticed how much the staff there cared for the residents. She believes that most of the instances of abuse or neglect reported by the DOJ were the result of under staffing.

Ms. Wilson also told the Commission that DDARS has recently completed a study of the types of quality assurance programs available to persons with developmental disabilities, and she will share that information with the Commission at a future date, once the data has been compiled into a report. Ms. Wilson stated that this information would be a useful tool for the Commission in studying the topic of quality assurance that was recently added to its responsibilities.

Senator Riegsecker asked Ms. Wilson when DDARS intends to hire a new superintendent at Muscatatuck SDC. Ms. Wilson responded that DDARS plans to continue having Liberty Healthcare personnel operate as superintendent at least through December of this year. She stated that she will most likely post an opening for a new superintendent sometime in the first quarter of 2000. When asked by Senator Riegsecker why DDARS is waiting to hire a new superintendent, Ms. Wilson remarked that Liberty Healthcare is making great strides in bringing in new staff and assisting in training current staff.

Senator Antich asked where Liberty Healthcare is located. Ms. Wilson responded that Liberty Healthcare is located in Pennsylvania, but has already been providing various services at Muscatatuck SDC for over two years and was recently awarded a contract with the state Department of Commerce.

Commission member Thomas VanMeter asked whether the state had been assessed any fines based upon the DOJ findings. Ms. Wilson stated that no fines per se had been assessed, but that due to the decertification of Muscatatuck SDC by the Department of Health, the state was currently ineligible to receive federal Medicaid funds for Muscatatuck SDC and thus all money being expended at that center was state money. Mr. VanMeter commented that the deficiencies cited by the DOJ were concerns that were brought up when the Commission visited Muscatatuck SDC four years ago and Fort Wayne SDC three years ago. Ms. Wilson stated that these problems are not ones that go away easily, particularly the problem of being able to keep the necessary level of staffing, and that the solutions that are developed to these problems must be solutions that are long-standing. Senator Antich pointed out that Ms. Wilson was not employed in DDARS when the Commission visited the centers three and four years ago. Senator Antich also commented that she was impressed with the atmosphere and the condition of the grounds at Muscatatuck SDC when the Commission made its visit there. In response to a question from Senator Antich, Ms. Wilson reported that DDARS expects Muscatatuck SDC to be recertified for federal Medicaid dollars at some point in the future, with the goal for recertification being the end of this calendar year. Senator Riegsecker remarked that recertification is very important, since the state must bear the entire cost of operating the center until recertification has been completed.

Commission member Christopher Durcholz inquired as to what DDARS's mission for Muscatatuck SDC is. Ms. Wilson replied that she has a meeting scheduled for next week

with the superintendents of both Muscatatuck SDC and Fort Wayne SDC to develop a corporate vision for the centers, including issues such as the maximum number of residents each center should have, staffing levels needed, and developing specific procedures to follow when problems arise. In general, Ms. Wilson said, the vision for the centers, and for all services provided by DDARS to persons with developmental disabilities, is to focus on the consumer and to set up a process where the consumer is looked at as an individual and services are provided based upon what the person needs and where they choose or need to live, all within the limits of available financial resources.

In response to a question from Mr. Durcholz regarding persons who wish to remain at Muscatatuck SDC instead of moving into a community-based setting, Ms. Wilson asserted that both the Muscatatuck SDC and Fort Wayne SDC will continue to remain open to serve those individuals who choose to live there, or for whom it is the best environment. She stated that closure of these facilities is not part of DDARS's vision. Representative Klinker commented that many people, particularly parents of persons living in the state developmental centers might be worried about closure of the facilities due to the closure of New Castle SDC and Northern Indiana SDC. Representative Klinker also related some information regarding the sons of constituents of Representative Klinker who were moved from Muscatatuck SDC and stated that although she had been initially concerned, the situation had ended with a positive result.

Representative Klinker expressed a concern that it appears that Indiana is not really willing to spend the money necessary to provide services to persons with developmental disabilities in that there are funds available to provide services to these persons that are not being used (i.e., there is a history of funds reverting back from FSSA to the general fund, including a recent reversion of \$ 7,000,000).

Representative Klinker inquired as to what DDARS is doing to assure that there will be services and providers available to persons who are transitioned from the developmental centers to community-based settings. Ms. Wilson responded that DDARS has an office of community planning that is, among other efforts, establishing the distribution of grant money to communities (i.e., municipal bodies and/or Step Ahead councils) to help communities establish the services that will be needed, and assessing how funds are actually used in certain communities to determine if the funds are being utilized as efficiently as possible while still providing person-centered services. Ms. Wilson stated that to date, the Indiana Association of Rehabilitation Facilities (IN-ARF) has been very good at establishing services when persons are transitioned out of a developmental center. In response to a comment by Representative Klinker that many service providers in the state have closed, Ms. Wilson informed the Commission that there have been several new providers coming into the state, though slowly. Although it is too soon to tell if these providers are staying, Ms. Wilson declared that it is an encouraging sign. Representative Klinker expressed concern over whether it will be possible for providers to hire people to actually provide care for persons with developmental disabilities who are moved out of developmental centers into the community and whether, once those individuals are moved, the funds will be available to provide the services they need. Ms. Wilson noted that part of the thirty-nine million dollars (\$39,000,000) that was recently appropriated to DDARS will be going to provide respite care, crisis intervention services, and technical assistance, as well as trying to eliminate the waiting list for services.

Ms. Wilson remarked that another topic that needs to be a focus is case management and how oversight of case management should be handled. In response to a comment from Representative Klinker, Ms. Wilson stated that flexibility should be a part of the case management structure, but not so much flexibility that a case manager cannot be held accountable. Ms. Wilson commented that it is important to start looking at a long-range

plan for providing services to persons with developmental disabilities, not just a two-year budget period.

Representative Alderman related some experiences he had as a police officer when taking persons with developmental disabilities into custody for involuntary commitment. He stated that it is very difficult to have police officers involved in this type of activity, although officers are better trained to deal with such situations today than in the past.

Representative Alderman also expressed concern over being able to keep track of persons with developmental disabilities who have been moved out of developmental centers into the community and stated that one person lost is too many. Ms. Wilson stated that DDARS has information that indicates the location of each resident who has been moved out of Central State SDC, New Castle SDC, and Northern Indiana SDC and she would be happy to present that information to the Commission at a future meeting. She agreed with Representative Alderman that it is very important to keep track of these individuals once they move out of a developmental center.

Commission member Sylvia Brantley expressed concern that DDARS only tracks the persons who are transitioned into the community from a developmental center setting. Ms. Wilson responded that DDARS checks on the status of all persons receiving services from the agency, but only those who are transitioned from a developmental center into the community are tracked under a particular contract. Ms. Brantley also raised concerns regarding the fact that some providers, while technically reaching the goals of an individual's plan, are not actually allowing the individual the opportunity to learn the life skills he or she is supposed to be learning. Ms. Brantley stated that this is of particular concern when the individual receiving services is not verbal or has no family to intervene on his or her behalf. Ms. Wilson replied that it is a goal of DDARS to assure that all objectives are being met for all consumers and that part of a case manager's responsibility is to make sure that all loose ends are taken care of. In addition, Ms. Wilson remarked that these types of issues are also looked at by DDARS quality management staff, who conduct random site checks to look for trouble situations. Certain facilities, including group homes, are also subject to inspection by the Department of Health.

Senator Antich inquired whether DDARS had a scale or chart which compares the average cost of Fort Wayne SDC, Muscatatuck SDC, a group home, and community-based residence. Ms. Wilson responded that DDARS has that type of information for each category asked about by Senator Antich, but not in a comparison-type format. Ms. Wilson stated that she would provide that information to the Commission at a future date.

In response to a question posed by Senator Riegsecker, Ms. Wilson explained that the DOJ will return at some future point to visit both Fort Wayne SDC and Muscatatuck SDC. Ms. Wilson commented that in the meantime DDARS will continue to respond to the issues raised regarding those facilities in the DOJ reports. Ms. Wilson also observed that the DOJ will return to Indiana in mid-August to begin Phase 2 of a review of the community-based settings for those individuals who were transitioned out of New Castle SDC and Northern Indiana SDC. Ms. Wilson told the Commission members that the DOJ report had reflected favorably upon the transition process carried out at New Castle SDC and Northern Indiana SDC. In response to a question from Representative Klinker, Ms. Wilson stated her belief that part of the reason the DOJ investigators were so hard-line in the report on Muscatatuck SDC and Fort Wayne SDC was to encourage DDARS to institute the same transitioning process at those facilities as had been used at New Castle SDC and Northern Indiana SDC.

Representative Klinker asked how much DDARS is paying Liberty Healthcare to provide services at Muscatatuck SDC. Ms. Wilson replied that DDARS is paying Liberty Healthcare

\$2,400,000 for a six-month period. Ms. Wilson explained that this fee covers many services, including contract staff, direct care staff, a superintendent, psychologist services and psychiatrist services. Ms. Wilson expects that DDARS will be contracting with Liberty Healthcare for another six months, although the fee will be less than the current fee. Ms. Wilson remarked that once Muscatatuck is recertified, it will again be eligible to receive federal Medicaid dollars.

In response to questions by Representative Klinker, Ms. Wilson reported that the mock surveys being conducted by DDARS at Muscatatuck SDC are indicating that the newly hired staff, particularly direct care staff, need additional time to learn all the responsibilities of the job. Ms. Wilson also stated that most of the staff training is conducted by state staff, with Liberty Healthcare staff assisting when needed. In addition, Ms. Wilson observed that the staff turnover rate at Muscatatuck has decreased tremendously as the result of better pay and a more positive image in the community. Ms. Wilson remarked that the same type of staffing difficulties are not occurring at Fort Wayne SDC.

Representative Klinker commented that it would be a good idea for the Commission to visit both Muscatatuck SDC and Fort Wayne SDC and to hear first-hand from the superintendents of those facilities. Ms. Wilson told the Commission that she would encourage the superintendents to testify before the Commission and that DDARS would assist in making arrangements for the Commission to visit the centers.

Commission member Suda Hopkins inquired as to whether any residents have been moved from Muscatatuck SDC. Ms. Wilson explained that some residents had indeed chosen to be moved from the center. Ms. Wilson commented that since October, 1998, DDARS has been aggressively transitioning those individuals who can and want to move into the community.

Presentation regarding New Jersey Developmentally Disabled Offenders Program

Senator Riegsecker introduced Senator Beverly Gard and asked her to speak about the New Jersey Developmentally Disabled Offenders Program. Senator Gard discussed a situation that occurred a couple of years ago with a young adult developmentally disabled constituent of hers who had gotten in trouble with the criminal justice system. Senator Gard explained that this young man was placed into the state prison system where he refused medical treatment and eventually died. Senator Gard noted that it has been brought to her attention that some other states have advocacy programs to provide intervention services to developmentally disabled persons who come into contact with the criminal justice system. Senator Gard requested that the Commission study this issue and noted that the issue is of particular concern in Indiana since many persons have been or are being transitioned into the community from state developmental center settings.

Senator Gard introduced John Dickerson and Kim Dodson, Executive Director and Director of Governmental Affairs, The ARC of Indiana. Mr. Dickerson and Ms. Dodson gave the Commission members an article from the New Jersey Lawyer entitled "Searching for Equal Justice: Criminal Defendants with Mental Retardation." (A copy of this article, referred to as "Exhibit C" is on file with the Legislative Information Center.) Ms. Dodson stated that The ARC of Indiana believes the New Jersey program is a good model that Indiana could look to in developing a similar program. In response to a question from Senator Riegsecker, Mr. Dickerson noted that there are no statistics available on exactly how many developmentally disabled persons are involved with the criminal justice system. He stated that the Department of Correction, for special education purposes, keeps certain statistics regarding juveniles with developmental disabilities in the system. Mr. Dickerson observed that there are many issues at play when a developmentally disabled person becomes

involved in the criminal justice system, including training of law enforcement officers, the willingness of many developmentally disabled persons to please those in authority, possible alternatives to the criminal justice system for developmentally disabled persons, and advocacy for developmentally disabled persons and their families regarding the process of the criminal justice system.

Commission members expressed an interest in studying this issue further and Senator Riegsecker asked Ms. Dodson and Mr. Dickerson to prepare a more in-depth presentation for a future meeting. Representative Klinker commented that the Commission should, in any program of this type that it recommends, encourage the participation of the Indiana State Bar Association, the Indiana Prosecuting Attorneys Council and the Fraternal Order of Police.

Future Meetings & Adjournment

The next meetings of the Commission will be held as follows:

- (1) Tuesday August 17, 1999, at Muscatatuck State Developmental Center.
- (2) Monday August 30, 1999, at Fort Wayne State Developmental Center.
- (3) Monday September 13, 1999, at 10:30 a.m. in the State House.

Members of the Commission will be leaving the State House at 10:30 a.m. for the meetings on August 17 and August 30.

The meeting held on September 13 will include a presentation by The ARC of Indiana regarding the possible establishment of a program in Indiana similar to the New Jersey Developmentally Disabled Offenders Program.

There being no further business to come before the Commission, Senator Riegsecker adjourned the meeting at approximately 11:55 a.m.